

ORDINANCE NO: 2068

INTRODUCED BY: AMADOR, BULLOCK, CARSON, DIAZ, DOUGLAS,  
ELLIOTT, FORD, MCELLOWNEY, TETER

AN ORDINANCE REPEALING, ADOPTING, AND AMENDING PORTIONS OF THE LAND DEVELOPMENT CODE RELATING TO TELECOMMUNICATION FACILITIES

WHEREAS, the City Council of the City of Commerce City adopted the Land Development Code by Ordinance 1720; and

WHEREAS, the Land Development Code became effective March 1, 2009; and

WHEREAS, recent changes in federal law related to telecommunication facilities has made it advisable to modify the Land Development Code with regard to these facilities; and

WHEREAS, the City Council of the City of Commerce City wishes to revise the Land Development Code to assure consistency with federal laws and requirements.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO AS FOLLOWS:

**SECTION 1.** Section 21-5268, entitled Telecommunications Facilities, is hereby repealed in its entirety.

**SECTION 2.** Section 21-3220(1)(a) is hereby repealed.

**SECTION 3.** Chapter V of the Land Development Code of the City of Commerce City is hereby amended by the addition of a new division which shall read as follows:

***Division 6: Telecommunication Facilities***

**Sec. 21-5600. Review and Approval**

All telecommunications facilities shall be reviewed and approved by the city prior to installation.

- (1) Section 6409(a) Facilities. All 6409(a) facility applications shall be reviewed and approved in compliance with the federal rules in effect at the time the application is received.
- (2) Other Facilities. Administrative Applications for telecommunication facilities that do not involve 6409(a) facilities shall be governed by the following:
  - (a) Approval Criteria. An application may be approved if the decision maker finds that:

- i. The facility complies with all city standards;
  - ii. The facility is suitable for the site, considering the size of the facility and lot, the location of the lot and the facility within the lot, the topography and natural features on the lot, and existing structures or improvements on the lot.
  - iii. There will be adequate mitigation of the visual impacts to the site on which the facility is located and the surrounding area to ensure harmony with adjacent uses and public rights-of-way;
  - iv. The facility creates a positive precedent for future telecommunications facilities and collocations.
- (b) Federal Aviation Administration (FAA) Review. Any telecommunication facility that exceeds 200 feet in height or are located within 20,000 feet of a major airport (commercial and military aircraft facility) and 10,000 feet of a general aviation airport (serving smaller aircraft) shall be reviewed by the FAA.
- (c) Removal Assurance. Prior to erecting or installing any new monopole, the owner or operator shall post with the city a bond, or some other form of financial assurance deemed suitable to the city, to cover the cost of removal of the facility if abandoned, or deemed abandoned, pursuant to the terms of this code.

## **Sec. 21-5601. Operating Standards**

All telecommunication facilities shall comply with the standards outlined in this section.

- (1) Signage. Wireless telecommunication facilities shall not display signs or advertising devices other than certification, warning, or other required seals or signs. This requirement does not preclude the mounting of telecommunication facilities on existing or new signs which signs are or will be installed in compliance with the standards contained in this land development code.
- (2) Co-Location Requirements. No telecommunications facility owner or operator shall unfairly exclude a telecommunication competitor from using the same facility or location. Upon request by the city, the owner or operator shall provide evidence as to why co-location is not possible. If a telecommunications competitor attempts to co-locate a facility on an existing or approved telecommunications facility or location, and the parties cannot reach an agreement, the city may require a third party study, at the expense of either or both parties, to determine the feasibility of co-location.
- (3) Abandonment.
  - (a) All permits or approvals for telecommunication facilities shall expire immediately upon cessation of use by the provider. Upon request of the City, all providers must furnish to the city proof of continued use of the telecommunications facility.

Proof shall consist of a copy of the FCC license and a letter from the cellular provider indicating that the facility is still in use. All providers must furnish to the city notice of discontinuation of use by furnishing a copy of any notices reflecting discontinued use as sent to the FCC or other federal regulatory agency having jurisdiction over the operation of the facility. In addition, commercial mobile radio service facilities not used for a continuous period of 6 months shall be deemed abandoned and shall be removed no later than 90 days after being deemed abandoned.

- (b) All leases for the location of commercial mobile radio service facilities must provide that the provider shall have full access to the leasehold space for the purpose of removing the facility. In addition, in the event that the provider and/or the landlord shall fail to remove the facility within the 90-day time period provided herein, then the city shall have access to the leasehold space of the abandoned facility for the purpose of removal. All costs incurred by the city in connection with the removal of the facility shall be recoverable, at the option of the city, against the bond posted by the owner or operator, or alternatively, all costs incurred may be assessed as a lien against the property on which the facility is located, and the city may record said lien, and the lien shall be enforceable and may be collected in the same manner as a tax lien by the county treasurer and any funds recovered thereby shall be remitted to the city, provided, however, that prior to the city's removal of the abandoned facility the city shall have first given notice to the provider and the landowner, by regular and certified mail, of its intent to remove the facility, not less than 30 days prior to the city's removal of any abandoned facility.

**Sec. 21-5602. Telecommunications Use Table**

Telecommunication facilities shall be allowed as detailed in Table V-2, entitled Use Schedule for Telecommunication Facilities. An “R” indicates that the facility is allowed with an administrative approval by the director. A “P” indicates that the facility is allowed as a use-by-permit. If the cell is blank, the facility is prohibited. Vacant properties shall default to the future land use shown in the comprehensive plan and mixed use properties shall default to the predominant land use (multi-family or commercial).

Table V-2 – Use Schedule for Telecommunication Facilities

| Land Use                  | New Non-Concealed Facilities Mounted on Existing Buildings or | New Concealed Facilities | New Non-concealed Monopoles | New Facilities Mounted on Existing Pole Structures |
|---------------------------|---------------------------------------------------------------|--------------------------|-----------------------------|----------------------------------------------------|
| Single-Family Residential |                                                               |                          |                             | P                                                  |

|                          |   |   |   |   |
|--------------------------|---|---|---|---|
| Multi-Family Residential | P |   |   | R |
| Mobile Home Park         |   |   |   | R |
| Commercial               | R | R | P | R |
| Industrial               | R | R | P | R |
| Public                   | R | R | R | R |
| Floodplain               |   |   |   |   |

\* Excludes 6409(a) facilities

### **Sec. 21-5603. Monopole Standards**

All new non-concealed monopoles shall comply with the following standards:

- (1) **Setback.** Monopoles shall be located in the side or rear yards of developed properties, and shall meet the required principal structure setbacks of the underlying zone district. The monopole shall not reduce the required parking, landscaping, and/or open space requirements for the principal use.
- (2) **Height Limitations.** Monopoles in industrial zoned districts shall not exceed 70 feet in height. Those in commercial zone districts shall not exceed 50 feet in height. The height of monopoles in all other zone districts shall be governed by the building height standards set forth in this code for the applicable zone district.
- (3) **Distance Requirements.**
  - (a) No portion of a monopole, including accessory equipment, shall be located within 100 feet of a property zoned and/or developed for single-family residential purposes. In the event that the height of a monopole exceeds 100 feet through a variance granted in compliance with this land development code, the monopole and all accessory equipment shall be set back from the aforementioned residential lands by a distance equal to the height of the monopole.
  - (b) To the maximum extent feasible, monopoles shall be located at least 2,000 feet from any existing freestanding telecommunications facility. It shall be the applicant's burden to establish a lack of feasibility.
  - (c) To the maximum extent feasible, monopoles shall not be located within 2,000 feet of the existing public service transmission line, which begins at Colorado State Highway 85, travels east, south of East 104th Avenue, moves north by northeast east of Picadilly Road, and concludes at Hayesmount Road. It shall be the applicant's burden to establish a lack of feasibility.
- (4) **General Screening.** Existing land forms, vegetation, and structures shall be used to aid in screening the monopole from view or blending in with the surrounding built and natural environment.

(5) Screening Wall.

- (a) When a monopole is located on an industrial zoned property and is visible from any public right-of-way, public or private open space, or non-industrial zoned property, the base of the monopole and associated accessory equipment shall be enclosed with a screening wall or fence compatible with the character of the property on which it is located and the surrounding area.
  - (b) When a monopole is located on a property that is not zoned industrial, the base of the monopole and any associated accessory equipment shall be enclosed with a screening wall or fence compatible with the character of the property on which it is located and the surrounding area.
  - (c) If a screening wall or fence is required, landscaping shall be installed on the outside of the fence to soften the appearance of the cell site. The landscaping shall consist of a minimum of one tree and three shrubs for every ten linear feet of publicly-visible enclosure perimeter, with a minimum of two trees per side. The first two trees per side shall be evergreen; the remaining landscaping should be an approximate 50% mix of evergreen and deciduous species to promote year-round visual interest.
- (6) Co-Location. To the maximum extent feasible, monopoles shall be designed for a minimum of two users. It shall be the applicant's burden to establish a lack of feasibility.
- (7) Design. Monopoles and any associated antennas shall be of a color which generally matches the building, surroundings or background and minimizes their visibility, unless a different color is required by the FCC or FAA. Muted colors, earth tones and subdued colors shall be used wherever possible.
- (8) Antenna Type. In some circumstances, the city may require canister-type antenna instead of the traditional array antenna, if the city determines that the proposed location would be negatively impacted by the array antenna.
- (9) Accessory Equipment. Telecommunication accessory equipment, such as buildings, shelters, cabinets, and other components, shall be grouped as closely together as technically possible. The total footprint coverage area shall not exceed 400-square feet per provider, and shall not reduce the requirements for parking and/or landscaping area for other principal uses on the parcel. No structure shall exceed 15 feet in height, and shall be compatible with the design, materials, and colors of structures on the same and/or adjacent parcels.

**Sec. 21-5604. Telecommunication Facilities on Existing Buildings or Structures**

All non-6409(a) telecommunication facilities that are mounted on an existing building or structure shall comply with the following standards:

- (1) Screening. The telecommunication facility shall be adequately screened in accordance with the rooftop mechanical and utility equipment screening standards found in this land development code.
- (2) Design. A wall-mounted telecommunication facility shall be flush-mounted and shall match the building or structure in design, color, and materials.
- (3) Accessory Equipment. Accessory equipment for a wall-mounted telecommunication facility which is located on the roof shall be adequately screened in accordance with the rooftop mechanical and utility equipment screening standards found in this land development code. If the accessory equipment is located on the ground, the accessory equipment shall adhere to the following requirements:
  - (a) The accessory equipment shall be located as close to the building or structure as possible.
  - (b) The accessory equipment footprint shall not exceed 400-square feet, and shall not be more than 15 feet in height.
  - (c) The accessory equipment shall be enclosed in a screening or concealing wall or fence to match the building or structure in color, design, and materials, and shall not reduce the landscaping or parking requirement for the use of the subject property.
  - (d) All accessory equipment structures shall be landscaped from public view and all rights-of-way along the outside of the required screening enclosure. Such landscaping shall consist of a minimum of one tree and three shrubs for every ten linear feet of publicly-visible enclosure perimeter, with a minimum of two trees per side. The first two trees per side shall be evergreen; the remaining landscaping should be an approximate 50% mix of evergreen and deciduous species to promote year-round visual interest.

**Sec. 21-5605. Concealed Telecommunication Facilities**

Concealed telecommunications facilities that meet the following standards may be placed as such in accordance with Table V-2 and shall not be required to comply with the standards contained in sections 21-5603 and 21-5604.

- (1) Dimensions. The dimensions of a concealed facility must reasonably approximate the dimensions of the object as which it is being disguised.
- (2) Design and Location. The design and location of a concealed facility must be compatible with the property on which it is located as well as the surrounding area.
- (3) Height and Setback. A concealed telecommunication facility shall comply with the bulk standards of the object as which it is being disguised and shall not reduce the required parking, landscaping, and/or open space requirements for the principal use.

- (4) Distance from Residential. Concealed monopoles shall not be located within 100 feet of a property zoned and/or developed for single-family residential purposes.
- (5) Co-Location. To the maximum extent feasible, concealed facilities shall be designed to accommodate a minimum of two users to reduce the overall number of sites required in the city.
- (6) Accessory Equipment. All accessory equipment shall be designed so as to not defeat the purpose of the concealment of the telecommunication facility itself through the use of screening, landscaping, or other technique.

**Sec. 21-5606. Telecommunication Facilities Located on Existing Pole Structures**

All new telecommunications facilities, including small cell and distributed antenna systems (DAS), installed on existing utility poles, light poles, signs, and similar types of structures, excluding monopoles, whether on private property or in the public right-of-way, shall comply with the following standards:

- (1) Location and Distance Requirements. In single-family residential zone districts, equipment shall only be located on existing poles within the right-of-way or within a utility easement. Such equipment must be located a minimum of 25 feet from any single-family residential home.
- (2) Mounting. Equipment shall be mounted as flush to the pole as is technically feasible.
- (3) Color. Equipment mounted on a pole shall be painted to match the color of the pole on which it is located.
- (4) Ground Equipment. Any equipment located on the ground shall be screened from public view in accordance with the screening standards found in this land development code.
- (5) Pole Replacement. Poles may be replaced in order to structurally accommodate the addition of a telecommunications facility. The new pole shall meet any applicable previous approvals and/or current requirements for those structures. Poles must have a primary functional component such as a light, and shall not be installed for the sole purpose of placing telecommunications equipment.

**SECTION 4.** Section 21-11200 of the Land Development Code of the City of Commerce City is hereby amended by the addition of the following defined terms:

**6409(a) Facility** shall mean any telecommunication facility associated with an eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station pursuant to section 6409(a) of the Spectrum Act, as that section is interpreted, applied, or revised in accordance with federal law.

**Telecommunication Facility, Concealed** shall mean any monopole or building mounted telecommunications facility that blends into the surrounding environment in a visually unobtrusive manner through disguise as a non-telecommunications structure or architectural feature.

**SECTION 5.** The following terms contained in Section 21-11200 of the Land Development Code of the City of Commerce City are hereby amended to read as follows:

**Telecommunication Facility** shall mean any facility established for the purpose of providing wireless transmission of voice, data, images or other information including but not limited to cellular telephone service, personal communication service, and paging service for any reason other than communicating with employees of that particular business. A telecommunication facility can consist of one or more antennas and telecommunication accessory equipment.

**Antenna** shall mean any structure or device used to retransmit or receive electromagnetic waves for the provision of services including, but not limited to, cellular, paging, personal communication services, and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave and satellite dishes, and omnidirectional antennas, such as whips. Except where the context clearly indicates otherwise, this term shall not include broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

**SECTION 6.** Table V-1 of the Land Development Code is hereby amended as follows:

- (a) The use classification category entitled “Telecommunications Facilities and Antennas” shall be retitled “Antennas”
- (b) The specific use type entitled “Telecommunications Facility (free-standing)” shall be removed in its entirety.
- (c) The specific use type entitled “Radio or television broadcasting facilities/offices” shall be retitled “Radio or television broadcasting offices” and the reference to section 21-5268 shall be removed.
- (d) The reference to Section 21-5268 shall be deleted for the specific use type entitled “Antennas for commercial/industrial use accessory to principal structure.”

**SECTION 7.** Except as specifically modified herein, the provisions of the Land Development Code shall remain unchanged and in full force and effect.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE  
ORDERED THIS 21<sup>ST</sup> DAY OF DECEMBER, 2015.



PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE  
ORDERED THIS \_\_\_\_\_ DAY OF JANUARY, 2016.

CITY OF COMMERCE CITY,  
COLORADO

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Sean Ford, Mayor

ATTEST:

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Laura J. Bauer, MMC, City Clerk